



**IT IS HEREBY ORDERED THAT:**

**I. FINDINGS**

1.1. This Court has jurisdiction over the subject matter of this lawsuit and over all Parties.

1.2. The terms of this Judgment shall be governed by the laws of the State of Vermont.

1.3. The State contends that entry of this Judgment is the public interest.

1.4. The Judgment reflects a negotiated agreement among the Parties.

1.5 Defendants are willing to enter into this Judgment regarding the Covered Conduct to resolve the Vermont Attorney General's concerns under Vermont consumer protection laws as to the matters addressed in this Judgment and thereby avoid significant expense, inconvenience and uncertainty.

1.6. The Parties have agreed to resolve the issues raised by the Covered Conduct by entering into this Judgment.

1.7. This Judgment shall not be construed or used as a waiver or limitation of any defense otherwise available to Defendants in any other action, or of Defendants' right to defend themselves from, or make any arguments in, any private individual or class action claims or suits relating to the subject matter or terms of this Judgment.

1.8. This Judgment is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Notwithstanding the foregoing, a State may file an action to enforce the terms of this Judgment.

1.9. No part of this Judgment shall create a private cause of action or confer any right to any third party for violation of any federal or state statute, except that the State may file an action to enforce the terms of this Judgment.

## II. DEFINITIONS

The following definitions shall be used in construing the Judgment:

2.1. “Consumer” means any person or business who purchased woodchips from Defendants.

2.2. “Covered Conduct” means Limlaw’s conduct and business practices which resulted in the overcharging of Consumers by falsifying the weight of woodchip loads by (i) using a tractor or the like to weigh down the truck scale; (ii) swapping weight slips with weight slips for heavier loads; (iii) removal of woodchips from already weighed woodchip loads; and (iv) violations of Limlaw’s Special Excess Weight Permits, which is the subject of the investigation by the State pursuant to Vermont’s Consumer Protection Act, 9 V.S. A. § 2460.

2.3. “Effective Date” means the date on which a copy of the Judgment, duly executed by Limlaw and the Vermont Attorney General, is approved by, and becomes a Judgment of the Court.

2.4. “Limlaw” or “Defendants” means Bruce Limlaw, Limlaw’s Pulpwood, Inc., Limlaw Chipping & Land Clearing, Inc., Limlaw Chipping and Landscaping, a/k/a Limlaw Chipping, and all of its officers, directors, employees, representatives, agents, affiliates, parents, subsidiaries, operating companies, assigns, and successors.

2.5. “Parties” means Defendants as defined in Section 2.4 and the Vermont Attorney General.

### **III. LEGAL FRAMEWORK**

3.1. The Vermont Consumer Protection Law means the Vermont Consumer Protection Act, 9 V.S.A. § 2451, *et seq.*, and any related case law.

3.2. The CPA prohibits unfair and deceptive acts and practices in commerce. 9 V.S.A. § 2453.

3.3. The Vermont Department of Motor Vehicles (“DMV”) regulates commercial truck weights and requires that trucks apply for and receive a Special Excess Weight Permit (“SEW”) which provides that delivery trucks can carry loads of up to 90,000 lbs. 23 V.S.A. § 1392.

3.4. DMV Regulation 23 V.S.A. § 1392 (17) provides some cushion for the truck weights with a SEW permit and does not consider a truck overweight until it exceeds 99,000 lbs. Once a truck exceeds 99,000 lbs., it is considered to be in violation of 23 V.S.A. § 1392.

3.5. A violation of the SEW permit is an unfair act or practice commerce, in violation of the CPA 9 V.S.A. §2453, which and is thereby subject to the penalty provisions established in 9 V.S.A. §2458.

## IV. ALLEGATIONS

4.1. Defendants Limlaw operates a business that produces and delivers heating woodchips to Consumers for use in their woodchip boilers.

### A. Wood Chip Deliver Methods

4.2. Heating woodchips generally are delivered and billed to consumers by charging for the net weight (“Net Weight”) of the load woodchips delivered. The State accepts two methods for determining the Net Weight of a commercial load, the in and out method and the predetermined tare weight method.

4.3. *In and Out Method:* The preferred and most accepted system for weighing commercial loads of this kind is what is described as an “in and out” weighing method. A scale at the entrance of the receiving facility, if it is equipped with a scale, or a registered roadside scale on the way to the receiving facility, first weights the fully loaded vehicle to determine the Gross Vehicle Weight (“GVW”). Once the vehicle is unloaded at the receiving facility, it obtains a second weight of the empty vehicle either when exiting the facility if it is equipped with a scale, or at a registered roadside scale along the return to its point of origin. This second weight is known as the vehicle’s tare weight (“Tare Weight”). To calculate the Net Weight, the Tare Weight is subtracted from the GVW. The resulting Net Weight accurately represents the weight of the load of woodchips to be billed to the consumer, especially if the receiving facility is equipped with a scale at the entrance, and reasonably represents the weight of the load if the weights are taken at a registered roadside facility, any variation being accounted for in the change of

fuel on board due to the travel. This method typically results in one time and date stamped scale slip listing the “in and out” weights (GVW and Tare Weight), or two time and date stamped scale slips; one reflecting the GVW and the second reflecting the Tare Weight of the vehicle.

4.4. Predetermined Tare Weight Method: As a less preferred but utilized system for weighing commercial loads of this kind, the State of Vermont accepts that commercial trucking operations can use predetermine Tare Weights (“Predetermined Tare Weight”). A Predetermined Tare Weight is particular to a specific truck or truck and trailer combination recorded on a registered scale, and subtract those Predetermined Tare Weights from the GVW of those matching truck and trailer combinations (also recorded on a registered scale), to determine the Net Weights of the loads delivered for accurate billing and record keeping purposes. To predetermine the Tare weight for a specific truck and/or truck and trailer combination, that truck or truck and trailer combination is weighed empty of load on a registered scale and the weight recorded in the form of a time and date stamped scale slip. This time and date stamped slip would represent that truck or truck and trailer combination’s Predetermined Tare Weight. If more than one truck and trailer combination are in use, this technique would be repeated to predetermine the Predetermined Tare Weight for each truck and trailer combination used in deliveries. These Predetermined Tare Weights would be kept in the manner of a list Predetermined Tare weights representing each truck , and truck and trailer combination in use, to reference in the calculation used to

determine the Net Weight of the delivery. These Net Weights would subsequently be used for accurate delivery and billing records. This method allows the company to only capture the GVW on a registered scale, producing a time and date stamped scale slip. This slip is then assigned to the Predetermined Tare Weight for that specific truck or truck and trailer combination in calculating the Net Weight of the woodchip load for billing purposes.

4.5. For most of its deliveries, Limlaw uses the scale located at its place of business and the Predetermined Tare Weight method to determine the Net weight of the wood chips delivered to Consumers. The one exception being the Ryegate Power Plant Ryegate Power Plant which has its own scale and utilizes the in and out method to determine Net Weight.

**B. Consumer Overcharges**

4.6. The initial complaint that Defendants were over-charging consumers by unfairly weighting their woodchip deliveries was received from the Agency of Natural Resources “ANR”).

4.7. The subsequent investigation found:

7.7.1. Defendants routinely added weight to the scale with the tractor with a bucket filled was a daily practice and done to make the woodchip load appear heavier. Thus, resulting in overcharging Consumers.

4.7.2. On several occasions Defendants swapped out weight slips from one truck to a heavier truck to make the woodchip weight seem heavier than it was and thus overcharging customers.

4.7.3. On several occasions Defendants removed woodchips out of a weighed truck bound for delivery for his own use. Thus, consumers were charged for wood chips they did not receive.

4.7.4. It is alleged that Defendants removed woodchips directly from logging site back to be screened and then weighed. Defendants delivered unscreened and unweighted wood chips directly to consumer. Defendants would provide weight slips without these truck loads being weighted. Thus, Consumers were paying for unverified weights and unscreened woodchips.

### **C. Violation of SEW Permits**

4.8. DMV Regulation DMV Regulation 23 V.S.A. § 1392 (17) s allows Special Excess Weight (“SEW”) permitted trucks to vary their weight up to 99,000 lbs. without issuing a violation. However, any SEW permitted vehicle weight in excess of the 99,000 lbs. is a violation of DMV law and the SEW permit.

4.9. From at least 2015 to present, Defendants had SEW permits which allowed for certain Limlaw trucks to weigh 90,000 lbs., but Limlaw trucks exceeded the permitted weight on many occasions.

4.10. Defendants had at least 77 deliveries over 100,000, and therefore are in violation of DMV law and their SEW permit.

## **V. INJUNCTIVE RELIEF**

5.1. Defendants shall comply fully with all provision of the Vermont law, the CPA, 9 V.S.A., Chapter 63; Vermont’s Vehicle Weight laws, 23 V.S.A., Chapter

13, including ceasing the practice of violating their SEW permits with overweight trucks.

5.2. Within 14 days of the Effective Date, Defendants shall adopt a written policy regarding its use of the Predetermined Tare Weight method. This written policy will include:

- i. The method for determining the Predetermined Tare Weight of a truck or truck and trailer combination;
- ii. Maintain a written record of the date, location, driver, and weight for each time the truck or trailer or truck and trailer combination is weighed;
- iii. Maintain a written record listing all the Predetermined Tare Weights for truck or trailer or truck and trailer combination;
- iv. The Predetermined Tare Weight of each vehicle and trailer shall be renewed once a month by weighing and logging said vehicle or vehicle and trailer combination. Any changes to the Tare Weights of the truck or trailer, or truck and trailer combination will be identified in a written record and updated accordingly.
- v. Upon request, the written record will be made available for inspection to the Attorney General, the Vermont Department of Motor Vehicles or the Vermont Agency of Agriculture, Food and Markets.

5.3. Limlaw shall amend its weight slips to include the following information:

- i. Identification of the driver,
- ii. Identification of the truck;
- iii. Identification of the trailer, if applicable;
- iv. The Tare Weight of the truck;

- v. The Tare Weight of the trailer, if applicable; and
- vi. If a Predetermined Tare Weight is being used, then the Predetermined Tare Weight of the truck, trailer or truck and trailer combination.

5.4. Copies of the weight slip(s) used to determine a deliveries Net Weight shall be provided to Consumers with corresponding invoices.

5.5. Limlaw shall, if it continues to use the Predetermined Tare Weights as Defendants' method to represent a delivery load's Net Weight, Defendants shall use timely and accurate records in the methods determining a vehicle, trailer, or vehicle and trailer combinations.

5.6. Defendants shall require the auditing of Limlaw's Predetermined Tare Weights annually, by July 31, at a third-party State certified scale.

5.7. A list of accurate Predetermined Tare Weights would then be provided to each Consumer.

5.8. A list of Predetermeined Tare Weights shall be made available to the State upon written request.

## **VI. MONETARY TERMS**

### **A. Penalty Payment**

6.1. Limlaw shall pay to the State of Vermont a total amount of \$100,000.00.

6.2. This amount shall be divided and paid by Limlaw to the State of Vermont in 8 quarterly payments of \$12,500 over two years.

6.3. No Later than 30 days after the Effective Date of this Judgement, the first payment shall be due.

6.4. The State may use the payment in any of the following ways: (1) to pay for attorney's fees and other costs of investigation and litigation; (2) to place in, or apply to, consumer protection enforcement, including future consumer protection enforcement, consumer education, litigation, or local consumer aid or revolving funds; (3) to defray the costs of the inquiry leading to this final Judgment; (4) for any lawful purpose, at the sole discretion of the Attorney General; and (5) pursuant to 32 V.S.A. § 462.

### **B. Restitution**

6.5. No Later than 30 days after the Effective Date of this Judgment, Limlaw shall provide Consumers with an aggregate credit equal to \$30,000.00 towards future purchase of wood chips at the sale price which is to be determined at the time of sale.

6.6. This aggregate credit of \$30,000.00 shall be divided equally between the approximately 30 Consumers and shall not expire, such that the maximum credit per the approximately 30 consumers is \$1,000.00/consumer. In the event that there are less than 30 consumers, each consumer will receive an additional pro rata share of the remaining balance of the aggregate credit.

6.7. No later than 30 days after the Effective Date of this Judgment, Defendants shall provide notice of the credit to each Consumer and provide the Attorney General with a copy of the notice and list of Consumers to receive the credit.

6.8. No later than 60 days of the Effective Date, Defendants shall provide the Attorney General with a summary of the credits applied to each Consumer's account.

## VII. RELEASE

7.1. Released Claims. By its execution of this Judgement, the State of Vermont releases and forever discharges Limlaw and its past and present officers, directors, shareholders, employees, representatives, agents, affiliates, parents, subsidiaries, predecessors, attorneys, assigns and successors (collectively, the "Releasees") from the following: all civil causes of action, claims, damages, restitution, fines, costs, attorney's fees, remedies or penalties that the State of Vermont Attorney General has asserted or could have asserted against the released Parties under the Vermont consumer protection laws resulting from the Covered Conduct up to and including the Effective Date except as set forth in paragraph 7.2 below.

7.2. Claims Not Covered. Notwithstanding any term of this Judgement, specifically reserved and excluded from the Released Claims in Paragraph 7.1 as to any entity or person, including Releasees, are any and all of the following, to which Limlaw expressly reserves each and every available defense:

- (a) Any criminal liability that any person or entity, including Releasees, has or may have to the State of Vermont;
- (b) Any civil or administrative liability that any person or entity, including Releasees, has or may have to the State of Vermont not expressly

covered by the release in Paragraph 7.1, including, but not limited to, any and all of the following claims:

- i. State or federal antitrust violations;
  - ii. Claims involving “best price,” “average wholesale price,” “wholesale acquisition cost,” or any reporting practices;
  - iii. Medicaid claims, including, but not limited to, federal Medicaid device rebate statute violations, Medicaid fraud or abuse (whether common law, statutory or otherwise), and/or kickback violations related to any state’s Medicaid program;
  - iv. State false claims violations; and
  - v. Claims to enforce the terms and conditions of this Judgement.
- (c) Any claims individual consumers have or may have under any of the above-cited Consumer Protection laws against any person or entity, including the Releasees.

7.3. Nothing contained in this Judgement shall relieve Limlaw of the obligations it maintains under any other judgment, order, or agreement relating to any of Limlaw’s products.

## VIII. ENFORCEMENT

8.1. For the purposes of resolving disputes with respect to compliance with this Judgement, should the Attorney General have a reasonable basis to believe that Limlaw has engaged in a practice that violates a provision of this Judgement subsequent to the Effective Date, then such Attorney General shall notify Limlaw in writing of the specific objection, identify with particularity the provision of this Judgement that the practice appears to violate, and give Limlaw thirty (30) days to respond to the notification; provided, however, that the Attorney General may take any action if the Attorney General believes that, because of the specific practice, a threat to the health or safety of the public requires immediate action. Upon receipt of written notice, Limlaw shall provide a good faith written response to the Attorney General's notification, containing either a statement explaining why Limlaw believes it is in compliance with the Judgement, or a detailed explanation of how the alleged violation occurred and a statement explaining how Limlaw intends to remedy the alleged violation. The Attorney General may agree, in writing, to provide Limlaw with additional time beyond the thirty (30) days to respond to a notice. Nothing in this section shall be interpreted to limit the State of Vermont's civil investigative demand ("CID") authority, to the extent such authority exists under applicable law.

8.2. Upon giving Limlaw thirty (30) days to respond to the notification described above, the Attorney General shall also be permitted reasonable access to inspect and copy relevant, non-privileged, non-work product records and documents in the possession, custody, or control of Limlaw that relate to Limlaw's compliance with each provision of this Judgement pursuant to the State's CID authority. If the

Attorney General makes or requests copies of any documents during the course of that inspection, the Attorney General will provide a list of those documents to Limlaw.

8.3. The State may assert any claim that Limlaw has violated this Judgement in a separate civil action to enforce compliance with this Judgement, or may seek any other relief afforded by law for violations of the Judgement, but only after providing Limlaw an opportunity to respond to the notification described in Paragraph 8.1 above; provided, however, that the Attorney General may take any action if the Attorney General believes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

8.4. The Parties stipulate that if the Vermont Superior Court enters an order finding that Limlaw has violated the AOD, including violations of 23 V.S.A. § 1392, Limlaw will pay a penalty of \$10,000 to the State of Vermont for each separate violation of the Judgment.

8.5. The State shall record a Judgment Lien on Limlaw's real property located at located at 261 VT 25, West Topsham, VT 05086, until such time the Monetary Terms described above are satisfied. Once the Monetary Terms are satisfied, the State shall have 15 business days to file a release of the Judgment Lien.

## IX. ADDITIONAL PROVISIONS

9.1. Nothing in this Judgement shall be construed to authorize or require any action by Limlaw in violation of applicable federal, state, or other laws.

9.2. Modification: The Judgement may be modified by a stipulation of the Parties, once it is approved by and becomes a judgment of the Court, or by court proceedings resulting in a modified judgment of the Court.

9.3. Limlaw shall not cause or encourage third parties, nor knowingly permit third parties acting on its behalf, to engage in practices from which Limlaw is prohibited by this Judgement.

9.4. The Attorney General may, at his or her sole discretion, agree in writing to provide Limlaw with additional time to perform any act required by this Judgement.

9.5. The acceptance of this Judgement by the State of Vermont shall not be deemed approval by the State of Vermont of any of Limlaw's business practices. Further, neither Limlaw nor anyone acting on its behalf shall state or imply, or cause to be stated or implied, that the State or any other governmental unit of the State has approved, sanctioned or authorized any practice, act, or conduct of Limlaw.

8.6. Any failure by any party to this Judgement to insist upon the strict performance by any other party of any of the provisions of this Judgement shall not be deemed a waiver of any of the provisions of this Judgement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgement.

8.7. Entire Agreement: This Judgement represents the full and complete terms of the settlement entered into by the Parties. In any action undertaken by the Parties, no prior version of this Judgement and no prior version of any of its terms that were not entered by the Court in this Judgement, may be introduced for any purpose whatsoever.

8.8. Jurisdiction: This Court retains jurisdiction of this Judgement and the Parties for the purpose of enforcing and modifying this Judgement and granting such additional relief as may be necessary and appropriate.

8.9. Notice: All Notices under this Judgement shall be provided to the following via email and US First Class Mail:

Defendants Limlaw:

Mr. Bruce Limlaw  
261 VT Route 25  
West Topsham, VT 05086

CC: Limlaw's attorney:

David L. Grayck, Esq.  
Law Office of David L. Grayck, Esq.  
P.O. Box 386  
North Bennington , VT 05257-0386  
Telephone: 802-522-0186  
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Vermont Attorney General:

Merideth C. Chaudoir,  
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Montpelier, Vermont 05609  
Telephone: 802-828-5479  
Electronic mail: merideth.chaudoir@vermont.gov

**APPROVAL BY COURT**

APPROVED FOR FILING and SO ORDERED this 29th day of July, 2022.



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Superior Judge